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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

**COLLEGENET, INC.,**  
**a Delaware corporation,**

Civil Nos. 02-CV-0484-HU (**LEAD CASE**)  
02-CV-1359-HU

Plaintiff,

v.

**APPLYYOURSELF, INC.,**  
**a Delaware corporation,**

**APPLYYOURSELF INC.'S RESPONSE**  
**TO COLLEGENET'S STATUS REPORT**  
**REGARDING SETTLEMENT-IN-**  
**PRINCIPLE OF COLLEGENET v. XAP**  
**LITIGATION**

Defendant.

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**APPLYYOURSELF INC.'S RESPONSE TO COLLEGENET'S STATUS REPORT**  
**REGARDING SETTLEMENT-IN-PRINCIPLE OF COLLEGENET v. XAP**  
**LITIGATION**  
**Page 1**

ApplyYourself respectfully submits this response to CollegeNET's Status Report (Doc. No.703). ApplyYourself does not object to CollegeNET's request that the current briefing schedule on CollegeNET's Motion for Reconsideration be suspended pending resolution of potential issues raised by the settlement-in-principle reached in the *CollegeNET, Inc. v. XAP Corporation*; Case No. 3:03-CV-01229-BR (the "XAP case"). CollegeNET filed its Motion for Reconsideration on November 20, 2008, and ApplyYourself's response is currently due on December 8, 2008. For the sake of judicial efficiency, ApplyYourself believes it makes sense to suspend the briefing schedule.

ApplyYourself suggests that the Court continue with the December 12, 2008, status conference scheduled in this case so the parties may then update the Court and discuss the status of the XAP case and the implications of a settlement and related court action, if any, in the XAP case. Alternatively, ApplyYourself is willing to file a joint status report with the Court by December 13, 2008, on these matters. In either case, ApplyYourself respectfully asks that the Court require CollegeNET to keep ApplyYourself apprised of the events as they unfold and confer on matters at least a couple of days before any Court conference or status report is due in this case. CollegeNET did not keep ApplyYourself apprised of events or attempt to confer with ApplyYourself before filing its most recent status report (Doc. No. 703).

Lastly, ApplyYourself does not agree with CollegeNET's comments on its pending Motion for Reconsideration or its apparent claim to a right to vacate the judgment in the XAP case. As to CollegeNET's Motion for Reconsideration, its motion lacks merit and contrary to CollegeNET's representations, it does not rest upon any "new evidence" that was not available when the collateral estoppel motion was being briefed. ApplyYourself also disputes CollegeNET's ability to vacate a final judgment of invalidity on the '042 patent and moot a jury

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REGARDING SETTLEMENT-IN-PRINCIPLE OF COLLEGENET v. XAP  
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**Page 2**

verdict based on a settlement agreement. ApplyYourself intends to file a motion to intervene in the *XAP* case to address these matters.

Dated: December 1, 2008

Respectfully submitted,

By: /s/ Kathleen C. Bricken  
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**CERTIFICATE OF SERVICE**

I hereby certify that on December 1, 2008 a true and correct copy of the foregoing

**APPLYYOURSELF INC.'S RESPONSE TO COLLEGENET'S STATUS REPORT**

**REGARDING SETTLEMENT-IN-PRINCIPLE OF COLLEGENET v. XAP**

**LITIGATION** was served upon the following attorney pursuant to LR 100.7:

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/s/ Kathleen C. Bricken  
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